CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☑ F	orce		Discourt.	☐ U.S.
Dov Levavi		Squad #9	201405284	□ A	buse		O.L.	Injury
Incident Date(s)		Location of Incident:	L	Pre	cinct:	18	Mo. SOL	EO SOL
Saturday, 05/17/2014 10:40 PM		2491 Arthur Avenue			48	11	/17/2015	11/17/2015
Date/Time CV Reported		CV Reported At:	How CV Reported:	D	ate/Time	Rece	ived at CCl	RB
Fri, 05/30/2014 1:01 PM		CCRB	Phone	Fr	ri, 05/30/2	2014	1:01 PM	
Complainant/Victim	Type	Home Addre	ess	•				
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. SGT Eliezer Pabon	5040	944868	048 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Joffre Cortez	09797	950235	048 PCT					
2. POM Kendo Kinsey	12092	938774	032 PCT					
3. POM Michael Soto	07250	952259	048 PCT					
Officer(s)	Allegatio	on			Inve	stiga	tor Recon	nmendation
A.SGT Eliezer Pabon	Force: Sg	gt. Eliezer Pabon used pl	hysical force against	§ 87(2)(b	b)			

Case Summary

On May 30, 2014, § 87(2)(b) Canty, Jr., who did	not witness the incident, file	d a complaint with the
CCRB. On May 17, 2014, at approximately 10:40	0 p.m., Sgt. Eliezer Pabon an	nd PO Joffre Cortez received
a pick-up report of an assault. After canvassing w	vith the victim, Sgt. Pabon ar	nd PO Cortez stopped and
handcuffed § $87(2)(b)$ -old § $87(2)(b)$ and § $87(2)(b)$	old § 87(2)(b)	who were identified as the
perpetrators. While \$87(2)(b) and \$87(2)(b)	were handcuffed and facing	
shop located at 2491 Arthur Avenue in the Bronz	Sgt. Pabon used force again	nst § 87(2)(b) causing §
s head to strike the shop's window and sha	atter the glass (Allegation A). § 87(2)(b) was arrested
and charged with § 87(2)(b), § 87(2)(a) 160.50		

This case was included in the CCRB's Sensitive Case List due to media coverage of the incident.

On June 4, 2014, due to a DA investigation into this incident, ADA Osman Abbasi formally requested that this case be placed on DA hold. The case remained on DA hold until November of 2014, when the DA declined criminal jurisdiction. Attempts were then made to contact and obtain a statement from and his attorneys. Neither \$87(2)(b) and his attorneys. Neither \$87(2)(b) nor the attorneys cooperated with the investigation's attempts to obtain a statement. \$87(2)(g)

IAB substantiated an allegation of force against Sgt. Pabon and requested charges and specifications.

Mediation, Criminal and Civil Histories

Because of \$87(2)(b) s arrest and the severity of his injuries, this case was not suitable for mediation.

\$87(2)(b) s arrest has been sealed since the incident date. \$87(2)(b)

On \$27(2)(b)

A Notice of Claim was filed on behalf of \$87(2)(b) claiming assault and false imprisonment, and seeking 25 million dollars as redress (encl. e48-50).

Civilian and Officer CCRB Histories

This is the first CCRB complaint involving § 87(2)(b) (encl. a2)

Sgt. Pabon has been a member of the NYPD for seven years. He has been the subject of four prior CCRB allegations, two of which alleged excessive force and none of which were substantiated. (encl. a1)

Results of Investigation

Video Footage – IA# 73 (encl. b12)

The video contains a timestamp in the top right corner and begins at 9:40 p.m. (the timestamp on the video was determined to have been one hour off the actual time). The camera faces Fordham Road and shows the sidewalk and a storefront along Arthur Avenue in the Bronx. Two uniformed police officers, identified as Sgt. Eliezer Pabon and PO Joffre Cortez, stand with a young male wearing a blue hooded sweatshirt, identified as society on the sidewalk in front of a hookah shop. The shop has large glass windows that face the sidewalk, and the glass front door to the shop is open, slightly blocking the camera's view of the three individuals. PO Cortez appears to frisk society who appears to be rearhandcuffed, before standing society front-first against the shop's window. At 9:40:41, Sgt. Pabon leaves the frame. Society who until this point appears calm and compliant, turns his head around toward PO Cortez, prompting PO Cortez to hold society. At 9:40:41, Sgt. Pabon re-enters the frame at 9:41:01, stands behind PO Cortez, and appears to speak to society. At 9:42:38, PO Cortez pushes society firmly against the glass while society continues to turn his head and move around slightly. Sgt. Pabon then talks to an individual on the sidewalk, leaves

the frame and re-enters at 9:45:30. During this time, \$8(2)(6) continues to turn his head around while
appearing to speak, and PO Cortez periodically moves him back toward the glass. At 9:45:40, Sgt. Pabon
stands several feet behind PO Cortez with what appears to be a radio in his hand. He is faced away from
PO Cortez and toward the camera. S87(2)(b) continues to turn his head toward PO Cortez. Sgt. Pabon
moves his radio from his left hand to his right, glances briefly toward \$87(2)(b) and at 9:45:45, turns
and walks toward him quickly. Sgt. Pabon extends his left hand toward \$87(2)(b) as he moves toward
him. His hand makes contact with the back of \$87(2)(b) s head and \$87(2)(b) s head lunges forward
against the glass storefront. The glass window immediately shatters as Sgt. Pabon and PO Cortez pull
back away from the storefront. PO Cortez appears to hold \$87(2)(b) by his handcuffs or hands
and Sgt. Pabon appears to hold onto \$87(2)(b) s shoulder or the back of his sweatshirt. As PO Cortez
backs up, it is revealed that he is also holding onto another rear-handcuffed individual, identified as
who until this point had been blocked from view by the open door. §87(2)(b)
also is pulled backward as PO Cortez holds him with one hand. §87(2)(b) bends forward toward the
ground and moves his legs up and down while both officers continue to hold him from behind. Two
additional uniformed officers, identified as PO Kendo Kinsey and PO Michael Soto, enter the frame. PO
Cortez walks about 15 feet up the block with \$87(2)(b) while PO Kinsey and PO Soto remain with
Sgt. Pabon, who maintains his hold on the back of \$87(2)(b) s head or sweatshirt. Sgt. Pabon brings
toward the shop's entrance and out of view of the camera while PO Kinsey enters the shop and
returns with a roll of paper towels. At 9:46:30, \$87(2)(b) PO Kinsey and PO Soto are out of the frame
while Sgt. Pabon's head remains partially visible. At 9:48:30, Sgt. Pabon approaches PO Cortez. At
9:49:10, PO Kinsey and PO Soto sit \$87(2)(b) down in the store's entryway while Sgt. Pabon returns to
them. PO Soto appears be holding paper towels against \$87(2)(0) s head. At 9:50:40, an ambulance
arrives. Two EMTs, identified as \$87(2)(b) and \$87(2)(b) and \$87(2)(b) and \$87(2)(b) and \$87(2)(b) arrives.
At 21:52:50, §87(2)(b) is lifted onto a stretcher before being brought to the ambulance and taken from
the scene.

Video Footage – IA# 72 (encl. b13)

This video shows the same events as the video in IA#73, but from a different angle as the camera faces East 189th Street. In the first five minutes of the video, the individuals in front of the store are almost entirely out of frame, although PO Cortez is partially visible in the bottom right corner of the screen. His arm can be seen, as can part of \$87(2)(6) \$\text{soft}\$ s body. They are both facing the glass storefront. At 9:40:40 Sgt. Pabon walks up the sidewalk before returning closer toward the camera and PO Cortez appears to tighten his hold on \$87(2)(6) \$\text{At 9:45:45}\$, the glass window shatters and PO Cortez moves back away from the window with \$87(2)(6) \$\text{At 21:46:15}\$, Sgt. Pabon and PO Cortez re-enter the frame while holding onto \$87(2)(6) \$\text{who is bent over and appears to be rear-handcuffed. PO Kinsey walks into the shop, exits with a roll of paper towels, and applies paper towels to \$87(2)(6) \$\text{shop}\$ s head. The remainder of the video is consistent with the events visible in the video in IA# 73.

Findings and Recommendations

Allegation A – Force: Sgt. Eliezer Pabon used physical force against § 87(2)(b)

stated to IAB (encl. c1-2) that after he and \$87(2)(0) were involved in an altercation with another individual and police arrived on scene, they fled before being apprehended by two officers, identified as Sgt. Pabon and PO Cortez. Then, while handcuffed and being held in front of the shop's window by PO Cortez, \$87(2)(0) asked Sgt. Pabon why he was being arrested, turned his body and tried to get away from the window. \$87(2)(0) who is described by IAB as being 5'6" tall and 120 pounds, denied to IAB that he was resisting and stated that he was simply questioning PO Cortez. While \$87(2)(0) stood facing the glass, he argued with Sgt. Pabon, who told him to shut up. Sgt. Pabon then pushed \$87(2)(0) shead into the glass, causing it to shatter. Shards of glass fell on \$87(2)(0) injuring his chest.

provided a statement to IAB that was generally consistent with that of \$87(2)(b) (encl. c7-9). He denied that \$87(2)(b) was making any movements before being pushed into the glass.
who was the victim of the assault reportedly perpetrated by \$87(2)(b) and \$87(2)(b) an
Witness \$87(2)(b) described Sgt. Pabon pushing \$87(2)(b) into the window while \$87(2)(b) shook his shoulders from side to side (encl. c12-13). Witness \$87(2)(b) stated that Sgt. Pabon, with his left hand, pushed \$87(2)(b) shead into the glass after \$87(2)(b) told him, "Fuck you." (encl. c14).
Sgt. Pabon stated in his IAB interview (encl. d5-6) that when PO Cortez took control of and and both were facing toward the window, they were verbally abusive to the officers. Then, when waiting for PO Kinsey and PO Soto to arrive, Sgt. Pabon noticed 77(2)(b) twisting and turning his body. This led Sgt. Pabon to believe that 77(2)(b) was going to break away from PO Cortez and escape, so he moved toward 77(2)(b) and put his hand on him. He could not recall what part of 77(2)(b) s body he made contact with, and stated that 77(2)(b) moved forward into the glass, which shattered. Sgt. Pabon maintained that it was his intent to restrain 77(2)(b) not to push him into the glass. He added that it was the momentum of securing 77(2)(b) that caused him to strike the window.
PO Cortez's statement to IAB (encl. d18-19) was generally consistent with that of Sgt. Pabon. He stated that both \$87(2)(b) and \$87(2)(b) cursed at the officers, and that \$87(2)(b) threatened him, when they were being held facing the window. \$87(2)(b) also squirmed around in an attempt to break free from PO Cortez's hold. This promoted Sgt. Pabon to tell \$87(2)(b) to stop moving and to push \$87(2)(b) against the glass to secure him. According to PO Cortez, Sgt. Pabon put his hands on \$87(2)(b) shoulder and elbow to do this.
A report ordered by the Bronx DA and described by IAB (encl. c23) analyzed the glass that had been used by the hookah shop. The glass was described as being outdated, less resistant to breakage than tempered safety glass, and compromised with a hole caused by a BB gun. The report concluded that the glass, if not compromised, would not have broken with the force imposed by Sgt. Pabon on [587(2)(5)]
According to NYPD Patrol Guide Procedure 203-11, Police officers are required to use minimum necessary force to arrest and restrain individuals at the scene of a police incident. (encl. i-ii)
§ 87(2)(g)
PO Cortez had been holding \$87(2)(b) in the same general position, while rearhandcuffed and facing a glass window, for at least five minutes before Sgt. Pabon suddenly rushed toward him with an arm extended and made contact with the back of \$87(2)(b) s head. \$87(2)(g)
§ 87(2)(g)

Team:		
Investigator:Signature	Print	Date
Supervisor:	Print	Date
Reviewer:	Print	Date
Reviewer:Title/Signature	 Print	 Date